

AGREEMENT BETWEEN THE

NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION

AND

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

FOR THE UPGRADING OF A WASTEWATER

TREATMENT PLANT
(I-684 REST AREA #45)

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TABLE OF CONTENTS

	Page
ARTICLE 1 - GENERAL PROVISIONS	2
SECTION 1.01 DEFINITIONS	2
SECTION 1.02 AUTHORITY OF THE CITY OF NEW YORK.....	7
SECTION 1.03 DURATION OF THIS AGREEMENT	7
SECTION 1.04 WWTP OWNER'S RIGHTS UNDER THE CITY-EFC AGREEMENT.....	8
SECTION 1.05 WWTP OWNER AUTHORIZED REPRESENTATIVE	9
ARTICLE 2 - DESCRIPTION OF WORK	9
SECTION 2.01 PROJECT.....	9
SECTION 2.02 SUMMARY OF PROCESS FOR COMPLETING THE UPGRADE	9
SECTION 2.03 METHOD OF PERFORMANCE OF WORK.....	10
SECTION 2.04 MODIFICATIONS TO FINAL UPGRADE PLAN.....	10
SECTION 2.05 EFC'S DESCRIPTION OF WORK.....	11
SECTION 2.06 OPERATION AND MAINTENANCE AGREEMENT BETWEEN THE CITY AND THE WWTP OWNER.....	11
SECTION 2.07 OPTION CONCERNING PAYMENT OF STARTUP AND PERFORMANCE TESTING COSTS	11
ARTICLE 3 - PAYMENT GENERALLY	13
SECTION 3.01 TOTAL CONTRACT AMOUNT	13
SECTION 3.02 PAYMENT	13
SECTION 3.03 PAYMENT PROCEDURES.....	14
SECTION 3.04 SPDES REIMBURSEMENT	15
ARTICLE 4 -PROCUREMENT OF GOODS AND SERVICES	16
SECTION 4.01 COMPETITIVE BIDDING OF THE FINAL UPGRADE PLAN WORK.....	16
SECTION 4.02 SELECTION OF ENGINEERING SERVICES.....	16
SECTION 4.03 PROCUREMENT OF NON-ENGINEERING CONTRACTS.....	17
SECTION 4.04 CONTRACT BETWEEN WWTP OWNER AND CONTRACTOR	17
ARTICLE 5 - BONDS	18
SECTION 5.01 BONDS	18
ARTICLE 6 - TRAINING	19
SECTION 6.01 TRAINING	19
ARTICLE 7 - STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS	19
SECTION 7.01 SPDES PERMITS.....	19
ARTICLE 8 - INSURANCE	19
SECTION 8.01 INSURANCE	19
ARTICLE 9 - PERSONNEL	20
SECTION 9.01 EMPLOYEES	20
ARTICLE 10 - RECORDS AND REPORTS	20
SECTION 10.01 GENERAL.....	20
SECTION 10.02 MAINTENANCE OF RECORDS	20
SECTION 10.03 AUDIT AND INSPECTION.....	20
SECTION 10.04 MONTHLY REPORTS.....	21

SECTION 10.05 BUDGETS AND COST ESTIMATES	21
ARTICLE 11 DEFAULT, SUSPENSION OR TERMINATION	21
SECTION 11.01 DEFAULT, SUSPENSION AND TERMINATION	21
SECTION 11.02 TERMINATION AND ASSIGNMENT PROCEDURES	21
SECTION 11.03 FORCE MAJEURE	22
ARTICLE 12 - REPRESENTATIONS AND WARRANTIES	22
SECTION 12.01 STATUS AND AUTHORITY	22
SECTION 12.02 CONFLICT OF INTEREST	23
ARTICLE 13 - INDEMNIFICATION	23
SECTION 13.01 INDEMNIFICATION	23
ARTICLE 14 MISCELLANEOUS PROVISIONS	23
SECTION 14.01 SEVERABILITY	23
SECTION 14.02 ASSIGNMENT OR OTHER DISPOSITION OF THE AGREEMENT	23
SECTION 14.03 MODIFICATION	23
SECTION 14.04 NOTIFICATIONS	24
SECTION 14.05 NO THIRD PARTY BENEFICIARY	24
SECTION 14.06 COOPERATION	24
SECTION 14.07 CLAIMS OR ACTIONS RELATED TO THIS AGREEMENT	24
SECTION 14.08 MISCELLANEOUS	25

APPENDICES

APPENDIX A Scope of Work
APPENDIX B Description of Compensable Force Account Work
APPENDIX C Payment Instructions and Forms
APPENDIX D State Fee Schedule
APPENDIX E Standard Clauses for all New York State Contracts
APPENDIX F Progress Report Requirements
APPENDIX G Form of Annual Budget
APPENDIX H Insurance

THIS AGREEMENT as of the 1st day of May, 1998 between THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION ("EFC"), a Public Benefit Corporation, organized and existing under the laws of the State of New York and having its principal office at 50 Wolf Road, Albany, New York 12205-2603, the NEW YORK STATE DEPARTMENT OF TRANSPORTATION (the "WWTP Owner"), acting by and through its Director of Contracts Management, and the NEW YORK STATE OFFICE OF GENERAL SERVICES (the "Owner's Representative"), acting by and through its Deputy Commissioner (EFC, the WWTP Owner and the Owner's Representative collectively referred to as the "Parties").

WHEREAS, EFC is a Public Benefit Corporation, established by Chapter 722 of the Laws of 1967, for the purpose of, inter alia, assisting state and local governments in the planning, financing, construction, maintenance and operation of sewerage treatment works, sewage collection systems and water management facilities; and

WHEREAS, the City of New York (the "City"), acting by and through the Commissioner of the New York City Department of Environmental Protection ("NYCDEP"), is charged with the duty of protecting the high quality of waters from which the City's water supply is drawn and preserving it from degradation for the purpose of protecting the health and general welfare of the consumers of this supply; and

WHEREAS, the City, in January 1997, executed a Memorandum of Agreement regarding the City's watershed protection program by and among the City, the State of New York, the United States Environmental Protection Agency, Catskill Watershed Corporation, the Coalition of Watershed Towns, Putnam County, Westchester County, certain watershed municipalities, and certain environmental groups (the "Watershed MOA"); and

WHEREAS, the City, as set forth in Paragraphs 89 and 90 of the Watershed MOA, has promulgated new Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources (the "Watershed Regulations"), pursuant to Article 11, § 1104 of the New York State Public Health Law and § 24-302 of the New York City Administrative Code; and

WHEREAS, the WWTP Owner is a state agency which owns and/or has all the requisite rights, power and authority to operate and/or modify a wastewater treatment plant ("WWTP") located within the watershed of the City of New York's drinking water supply system; and

WHEREAS, discharges from the WWTP flow into a tributary of Holly Stream, a tributary of the Muscoot Reservoir; and

WHEREAS, the City is concerned about the potential impact of the discharges from the WWTP on the drinking water supply of the City of New York; and

WHEREAS, the WWTP Owner, pursuant to New York State Executive Order 51 dated May 20, 1997 and the Letter of Commitment dated April 28, 1998, agrees to comply with the requirements of the Watershed Regulations and to participate in the WWTP Upgrades Program prescribed in this Agreement; and

WHEREAS, the New York State Office of General Services ("OGS") is a State Agency, established pursuant to Executive Law § 200 as an office within the Executive Department. OGS is authorized pursuant to Public Buildings Law § 6 to prepare drawings and specifications for and supervise the construction, reconstruction, addition to, alteration or improvement of buildings erected at the expense of the State; and

WHEREAS, the Dormitory Authority of the State of New York ("DASNY") is a body corporate and politic of the State of New York, constituting a public benefit corporation, created by the Dormitory Authority Act, as amended, being Title Four of Article Eight of the Public Authorities Law, successor to the Facilities Development Corporation and the Medical Care Facilities Finance Agency, pursuant to Title Four-B of Article Eight of Public Authorities Law, and authorized to undertake construction activities on behalf of the WWTP Owner; and

WHEREAS, as set forth in the Watershed MOA, the City has agreed to pay for the costs of upgrading existing WWTPs to comply with the requirements imposed solely by the Watershed Regulations ("Regulatory Upgrades", as that term is defined herein), in order to ensure that the work is performed expeditiously; and

WHEREAS, as set forth in the Watershed MOA, the City has also agreed to provide funding to help assist certain WWTP Owners in the communities located in the Watershed, west of the Hudson River, ("West of Hudson Watershed") to rehabilitate, replace and/or upgrade certain negotiated WWTP structures and equipment which are unreliable, failing, or nearing the end of their useful lives and which are necessary to the WWTP's treatment process and the WWTP's compliance with its State Pollutant Discharge Elimination System ("SPDES") permit ("SPDES Upgrades", as that term is defined herein); and

WHEREAS, as set forth in the Watershed MOA, the City has requested, and EFC has agreed to provide, assistance to the City in administering a program to design, permit, construct and install upgrades to existing WWTPs (the "WWTP Upgrade Program"); and negotiating agreements with WWTP owners which will provide for the disbursement of City funds to pay for the costs of designing, permitting, constructing and installing such upgrades; and

WHEREAS, the City and EFC have executed a contract providing for EFC to provide such assistance to the City (the "City-EFC Agreement").

NOW, THEREFORE, in consideration of the premises, the mutual representations and agreements hereinafter contained, together with such other and further consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 - GENERAL PROVISIONS

Section 1.01 Definitions

Certain words set forth in this Agreement shall have the following meanings. Other words defined throughout this Agreement shall have the meanings ascribed to them.

1. "Agreement" means this Agreement between EFC and the WWTP Owner, including all attachments and appendices hereto.

2. "Annual Budget" means the form set forth in this Agreement as set forth as Appendix G submitted to EFC on or before February 1st of each year and shall estimate the need for funding

from July 1st to June 30th of each year during the Term of this Agreement.

3. "Change Order" or "Change Orders" means all proposed changes, modifications, and/or amendments to the Final Upgrade Plan, deemed final when approved by EFC or NYCDEP in accordance with this Agreement.

4. "City" means the City of New York, and any of its departments and agencies, including without limitation NYCDEP.

5. "City-EFC Agreement" means the Agreement, dated as of January 21, 1997, between the City and EFC with respect to the WWTP Upgrade Program.

6. "Close-Out Approval(s)" means NYCDEP approval of the Close-Out Package(s) and relevant parts of the Contractor Completion Documents relative to each construction contract submitted in accordance with the requirements set forth in Task 4 of the Scope of Work, and which authorizes the release of retainage(s) and final payment(s) to the WWTP Owner for the construction of the Upgrade.

7. "Close-Out Package(s)" or "Construction Close-Out Documents" means the document package(s) relative to each construction contract submitted by the WWTP Owner to EFC upon the completion of construction of the Upgrade, in accordance with Task 4 of the Scope of Work.

8. "Close-Out Payment(s)" means EFC's final payment(s) relative to each construction contract to the WWTP Owner and any outstanding payment(s) for construction work not previously paid in connection with the Upgrade Project as authorized by NYCDEP. These final costs specifically exclude any costs related to Startup and Performance Testing.

9. "Commencement Date" means the date set forth in a Notice to Commence Work which authorizes the WWTP Owner to undertake and perform the tasks set forth in the Scope of Work.

10. "Conceptual Upgrade Plan" or "CUP" means the report prepared by the Engineer outlining the Engineer's plan and schedule to design

the WWTP Upgrade in accordance with the Scope of Work.

11. "Consultant" or "Contractor" or means any entity contracting with the WWTP Owner for the provision of goods or services related to this Agreement.

12. "Contractor Completion Documents" means the documents submitted by a construction contractor to the WWTP Owner and NYCDEP in accordance with the Scope of Engineering Services.

13. "DASNY" means the Dormitory Authority of the State of New York.

14. "Disbursement Request" means the written request made by the WWTP Owner to EFC for disbursement of Upgrade Funds for actual and reasonable expenses associated with the Upgrade work.

15. "EFC" means the New York State Environmental Facilities Corporation.

16. "Emergency Change Order" means a Change Order necessary to preserve and protect the public health, safety, or welfare, or to prevent injury to human, plant and animal life or property (including without limitation any release of insufficiently treated wastewater), following the procedures set forth in this Agreement.

17. "Engineer" means the professional engineer or engineering firm whose engineer(s) are licensed to do business in New York State, selected by the WWTP Owner to undertake the engineering work on the WWTP Upgrade, and approved by NYCDEP.

18. "Engineer Certification" means the AIA form, attached hereto in Appendix C, to accompany all construction costs submitted by the WWTP Owner.

19. "Engineer Contract" means the contract between the WWTP Owner and the Engineer which is in accordance with the terms of this Agreement and has been approved by NYCDEP.

20. "Engineer Proposal" means the proposal submitted to the WWTP Owner for the

engineering services with respect to the WWTP Upgrade from the Engineer preliminarily selected by a WWTP Owner, and in compliance with the requirements set forth in Attachment A to the Scope of Work and this Upgrade Contract.

21. "Engineer Request for Proposal" or "Engineer RFP" means the documents attached to the Scope of Work as Attachment A, by which the WWTP Owner solicits a proposal from an Engineer to undertake the engineering work required to design and implement the design of the WWTP Upgrade in accordance with this Agreement.

22. "Final Acceptance" means NYCDEP final acceptance of the WWTP Upgrade following completion of Startup and Performance Testing requirements.

23. "Final Inspection" means an inspection at the completion of construction of the WWTP Upgrade which will be conducted by the WWTP Owner, its Engineer, EFC and NYCDEP for the purpose of verifying the Engineer's determination that the WWTP Upgrade is functionally complete, and that all construction related punch list items have been satisfactorily resolved.

24. "Final Upgrade Plan" or "FUP" means the Proposed Upgrade Plan consisting of engineering plans and costs for implementing a Regulatory Upgrade, and, if applicable, a SPDES Upgrade, or such other NYCDEP approved Upgrade to the WWTP, which has been prepared by the Engineer in accordance with Attachment A of the Scope of Work, and which has received NYCDEP approval.

25. "Functional Completion Certification" means the written certification from the Engineer containing the Engineer's P.E. Seal attesting that the WWTP Upgrade is functionally complete. Such certification will include but not be limited to certifying that the WWTP Upgrade was constructed in accordance with the approved Final Upgrade Plan; certifying that the equipment was installed as designed and specified; certifying that the system operates within the testing parameters set forth in the Final Upgrade Plan design report; and certifying that the WWTP Upgrade is ready to proceed to Startup and Performance Testing.

26. "Functionally Complete" means the determination by the Engineer that the WWTP Upgrade is ready for its Final Inspection, and that the construction of the Upgrade is sufficiently complete so as to enable the Engineer to issue a Functional Completion Certification.

27. "Letter of Commitment" means the letter sent by the State owned WWTP to NYCDEP indicating that a particular WWTP Owner has agreed to participate in the WWTP Upgrade Program.

28. "Litigation Expenses" means the fees and costs for judgments or settlements, associated with (a) the design and construction of the Upgrade, (b) SEQRA compliance, (c) challenges to permits and governmental approvals, and (d) claims by contractors or consultants, provided that EFC and NYCDEP agree with the position taken by the WWTP Owner. It does not include any fees and costs covered by insurance held by any party to such litigation. It does not include fees and costs for legal representation to defend or prosecute litigation associated with tort claims and actions.

29. "Mid-Design Meeting" means the meeting between EFC and the Engineer at the point when the Proposed Upgrade Plan is 65% complete.

30. "Notice to Commence Work" means the notice that EFC provides to the WWTP Owner to authorize the WWTP Owner to begin performing the work described in this Agreement.

31. "Notice to Proceed with Award" means the notice that EFC provides to the WWTP Owner to authorize the WWTP to proceed with award of construction contracts.

32. "Notice to Proceed with Bid Solicitation" means the notice that EFC provides to the WWTP Owner to authorize the WWTP Owner to begin the process of soliciting bids for the construction contracts to be awarded.

33. "Notice to Proceed with Execution of Contracts and Construction" means the notice that EFC provides to the WWTP Owner to authorize the execution of the construction contract(s) between the WWTP Owner and the successful bidder(s) and to authorize the commencement of construction of the WWTP Upgrade.

34. "NYCDEP" means the New York City Department of Environmental Protection.

35. "NYSDEC" means the New York State Department of Environmental Conservation.

36. "OGS" means the New York State Office of General Services.

37. "Operation and Maintenance Agreement" or "O&M Agreement" means the agreement entered into between NYCDEP and the WWTP Owner providing for payment by the City of the annual cost of operating and maintaining the Regulatory Upgrade to be installed at such WWTP, and further providing, if applicable, in accordance with Sections 2.06 and 2.07, among other things, for the Startup and Performance Testing of the Upgrade, and Final Acceptance by the City of the Upgrade as being in compliance with the Watershed Regulations.

38. "Operations and Maintenance Manual" or "O&M Manual" means the required contents of such a manual, as those requirements are set forth in Attachment A to the Scope of Work and otherwise in accordance with good engineering practices.

39. "Operations and Maintenance Plan" or "O&M Plan" means a compliance plan and schedule developed in accordance with Section 18-36 (a)(10) of the Watershed Rules and Regulations that establishes the approach and time frame for compliance with the requirements of the Watershed Regulations.

40. "Owner's Representative" means either DASNY or OGS.

41. "Party" or "Parties" means EFC or the WWTP Owner or both of them as collectively referred to in this Agreement.

42. "P.E. Seal" means the recognized certification of a licensed professional engineer in New York State.

43. "Performance Testing" means the testing of the equipment and materials constructed and installed as part of the WWTP Upgrade to demonstrate compliance with the requirements of the Watershed Rules and Regulations, with the end

result being Final Acceptance of the WWTP Upgrade by NYCDEP.

44. "Preliminary Engineering Scope" or "Preliminary Engineer Scope of Work" means the engineer scope of work document, setting forth a preliminary description of the Upgrade Project, which shall be utilized by a WWTP Owner in soliciting an Engineer Proposal which is made a part of this Agreement in Attachment A to the Scope of Work.

45. "Pre-Qualified List" or "Pre-Qualified Engineers List" means the list (prepared by EFC) of pre-qualified engineers, approved by NYCDEP, that WWTP Owners may hire for the work associated with the WWTP Upgrade Program.

46. "Program Funds" means the NYCDEP approved costs for the completion of the WWTP Upgrade Program which are provided by the City to EFC for disbursement to WWTP Owners.

47. "Proposed Upgrade Plan" or "PUP" means an engineering plan in accordance with the requirements set forth in Attachment A to the Scope of Work, for implementing a Regulatory Upgrade, and, if applicable, a SPDES Upgrade, or such other NYCDEP- approved Upgrade of the WWTP which enables it to comply with the Watershed Regulations, which has been prepared by the Engineer, but which has not yet received NYCDEP approval.

48. "Regulatory Upgrades" means the equipment and methods of operation which are required solely by the Watershed Regulations and not because of any provision of federal or State law, regulation or enforceable standard otherwise applicable to WWTPs. Without limiting the City's obligation concerning the foregoing and consistent with the City-EFC Agreement, with respect to any eligible WWTP and for purposes of this Agreement only, Regulatory Upgrade shall be deemed to include machinery and equipment necessary to comply with the following requirements to the extent that such eligible WWTP does not have such machinery and equipment as of the effective date of the Watershed MOA:

1. Phosphorus removal;
2. Sand filtration;
3. Disinfection;

4. Microfiltration or a NYCDEP-approved equivalent technology;
5. Standby power;
6. Power alarm;
7. Automatic start-up capability;
8. Disinfection back-up;
9. Disinfection back-up automatic start-up capability;
10. Back-up sand filtration
11. Recording flow meters; and
12. Alarm telemetering.

49. "Regulatory Upgrade Program" means the program by which the City has agreed, pursuant to paragraph 141 of the Watershed MOA and the Agreement, to pay for the costs of designing, permitting, constructing and installing of Regulatory Upgrades at WWTPs in the Watershed.

50. "SEQRA" means the New York State Environmental Quality Review Act (New York Environmental Conservation Law Article 8) and regulations promulgated thereto (6 New York Code of Rules and Regulations Part 617).

51. "Schedule of Work" means the required time frame for completion of the work set forth in the Scope of Work as Attachment B.

52. "Scope of Engineering Services" means the document which contains the work required of the Engineer hired by the WWTP Owner necessary to complete the Upgrade Project as set forth in the Request for Proposal in Attachment A of this Agreement.

53. "Scope of Work" means the Scope of Work attached and made a part of this Agreement as Appendix A.

54. "SPDES" means the State Pollutant Discharge Elimination System.

55. "SPDES Upgrade" means the rehabilitation, replacement or upgrade of equipment that is unreliable, failing or nearing the end of its useful life and is necessary to the treatment process, as agreed upon by NYCDEP and a WWTP Owner, where such measures are not required solely by the

Watershed Regulations, and where such upgrades will facilitate certain West of Hudson WWTPs to reliably meet the conditions of their respective SPDES permits.

56. "SPDES Upgrade Funds" means the money provided by the City to pay for the costs of the SPDES Upgrade Program.

57. "SPDES Upgrade Program" means the program by which the City has agreed, pursuant to paragraph 121 of the Watershed MOA and the Agreement, to pay for the costs of designing, permitting, constructing and installing of SPDES Upgrades for WOH WWTPs, as agreed upon by NYCDEP and a WWTP Owner.

58. "Standard Engineer Clauses" or "Standard Engineer Contract Clauses" means the standard clauses prepared by NYCDEP, and made a part of this Agreement in Attachment A to the Scope of Work, which must be incorporated into the contract between the WWTP Owner and the Engineer.

59. "Standard Technical Specifications" means the standard technical specifications prepared by NYCDEP to be utilized by the Engineer hired by the WWTP Owner for the design of the WWTP Upgrade and made part of this Agreement in Attachment A to the Scope of Work.

60. "Startup" or "Startup Services" means those services performed by the Engineer and any construction contractors or manufacturers representatives to place the WWTP Upgrade online, meaning to use and operate the WWTP Upgrade with wastewater as constructed, so that the WWTP Upgrade meets the discharge limitations, as defined in the Watershed Regulations. Startup requires that the operation of the WWTP meet the Watershed Regulations with respect to effluent limits.

61. "State" means the State of New York.

62. "Stop Work Order" means a direction issued by NYCDEP through EFC to the WWTP Owner to cease any or all work with respect to this Agreement for the time period set forth therein.

63. "Ten State Standards" means the Recommended Standards for Wastewater Facilities,

1990 edition, Great Lakes-Upper Mississippi River Board of State Public Health and Environmental Managers.

64. "Term" means the earlier of the following (i) completion of the work described in the Scope of Work, (including, if applicable in accordance with Section 2.07 of this Agreement, any work related to Startup or Performance Testing) or (ii) five years after the Commencement Date

65. "Total Contract Amount" means the current estimated approved amount payable pursuant to this Agreement for Regulatory Upgrades and/or SPDES Upgrades and the NYCDEP approved amount for SPDES Reimbursements.

66. "Uniform Contracting Questionnaire" means the New York State questionnaire completed by the lowest bidder contractor upon which the WWTP will make a determination of reliability and responsibility to complete the WWTP Upgrade.

67. "Upgrade Contract" means this Agreement entered into between EFC and a WWTP Owner for the purpose of implementing the WWTP Upgrade Program.

68. "Upgrade Contract Contingency Allocation" means the allocated amount of money in the Upgrade Contract which is not specifically designated to pay for the estimated costs set forth in the Final Upgrade Plan or other NYCDEP approved costs, and which may be utilized for approved Change Orders or other NYCDEP approved costs, in accordance with this Agreement.

69. "Watershed" or "New York City Watershed" means the area of land that drains surface water into a reservoir or controlled lake or into the tributaries of a reservoir or controlled lake of the Catskill and Delaware System (the Ashokan, Cannonsville, Kensico, Neversink, Pepacton, Rondout, Schoharie, and West Branch/Boyd's Corner Reservoirs and the tunnels, dams and aqueducts which are part of and connect the above listed reservoirs) and the Croton System (the Amawalk, Bog Brook, Cross River, Croton Falls, Diverting, East Branch, Middle Branch, Muscoot, New Croton, and Titicus Reservoirs, Kirk Lake, Lake Glenida and Lake Gilead, and the tunnels,

dams and aqueducts which are part of and connect the above listed reservoirs and controlled lakes).

70. "Watershed MOA" or "Memorandum of Agreement" means the New York City Watershed Memorandum of Agreement executed on January 21, 1997 by the City, State, Federal Government, watershed communities, and certain environmental groups.

71. "Watershed Regulations" means the New York City Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources effective as of May 1, 1997.

72. "Watershed Regulations Effective Date" means May 1, 1997, the date the Watershed Regulations became effective.

73. "West of Hudson" or "WOH" means the drainage basins of the specific reservoirs of the New York City Watershed located west of the Hudson River in the New York counties of Greene, Delaware, Ulster, Schoharie, and Sullivan.

74. "WWTP" or "WWTPs" means one or more of the public and private wastewater treatment plants located within the Watershed.

75. "WWTP Owner" means the owner and/or entity having all the requisite rights, powers and authority to operate and/or modify the WWTP that is the subject of this Agreement.

76. "WWTP Upgrade" or "Upgrade(s)" or "WWTP Upgrade Project" or "Upgrade Project" means the Regulatory Upgrade and/or SPDES Upgrade to be undertaken consistent with this Agreement at a particular WWTP or such other upgrade of the WWTP as approved by NYCDEP and funded by NYCDEP and the City pursuant to the WWTP Upgrade Program.

77. "WWTP Upgrade Program" or "Program" means the program by which the City will provide financial assistance to WWTP Owners, in accordance with Paragraph 121 and paragraph 141 of the Watershed MOA, and EFC will provide program management assistance to NYCDEP in order to carry out the Regulatory Upgrade Program and the SPDES Upgrade Program.

Section 1.02 Authority of the City of New York

The WWTP Owner acknowledges and agrees that the City shall be a third-party beneficiary to this Agreement. EFC is not obligated to institute legal proceedings to enforce the terms of this Agreement. Accordingly, the City, as a third-party beneficiary, shall have a direct cause of action against the WWTP Owner to enforce this Agreement, in law or in equity, in its own name or in the name of EFC. If the City commences an action in EFC's name, EFC shall be given notice immediately or as soon as practicable. The City's rights under this Agreement shall include, but not be limited to, review and approval of any modifications to this Agreement and to the Scope of Work attached as Appendix A, as specified in Articles 2 and 4 of this Agreement.

Section 1.03 Duration of this Agreement

A. This Agreement shall be effective upon execution by the Parties and approval by the New York State Attorney General and Office of New York State Comptroller. The WWTP Owner shall begin the work to be performed under this Agreement on the date set forth in a Notice to Commence Work ("Commencement Date").

B. This Agreement shall expire, unless sooner terminated pursuant to the terms of this Agreement, upon all payments then due being made and the earlier of the following: (i) completion of the work described in the Scope of Work in accordance with the Schedule of Work, including, if applicable in accordance with Section 2.07 of this Agreement, any work related to Startup or Performance Testing or (ii) five years after the Commencement Date (the "Term").

C. NYCDEP may issue through EFC a Stop Work Order to the WWTP Owner in accordance with the following terms and conditions:

1. After the Conceptual Upgrade Plan is approved and before construction contracts are let NYCDEP may issue through EFC a Stop Work Order to the WWTP Owner, with a copy to EFC, directing the WWTP Owner to cease any or all work with respect to the Agreement either while plans for the connection of the WWTP to a wastewater treatment plant, or while plans, studies or projects to eliminate the surface discharge of treated wastewater from this facility within the Watershed are prepared and reviewed.

2. During any Stop Work Order pursuant to this sub-section, EFC shall, with NYCDEP approval, continue to make disbursements for administration, legal and engineering fees and expenses attributable to the WWTP Owner's participation in i) the study phase of a plan for the connection of the WWTP to a wastewater treatment plant, or ii) other projects which eliminate the surface discharge of treated wastewater from this facility within the Watershed. NYCDEP approval pursuant to this section shall be timely and shall not be unreasonably withheld.

3. The Stop Work Order shall terminate upon the earlier of the following: (i) NYCDEP order to recommence work or (ii) three (3) years from issuance of the Stop Work Order, unless the county or municipality submits written notification to NYCDEP of the results of the plans or studies indicating that either the WWTP will be connected to a new or existing wastewater treatment plant or the WWTP will participate in a project that eliminates the surface discharge of the WWTP from the Watershed; provided however, that NYCDEP will terminate the Stop Work Order upon later written notification from such municipality or county that such connection or project shall not occur.

D. In the event all work hereunder is not to be completed prior to the expiration of the Term, the Agreement, with the written approval of NYCDEP, shall be extended where the WWTP Owner has been justifiably delayed and will not be able to complete the work within the Term of this Agreement, or as otherwise approved by NYCDEP. In order to request an extension of the Term of the Agreement, the WWTP Owner shall submit to NYCDEP and EFC written notice documenting the causes of the delay. NYCDEP may grant an extension of time to complete the work, and EFC shall notify the WWTP Owner of the extension and incorporate the extension into the Schedule of Work set forth in Attachment B of the Scope of Work.

Section 1.04 WWTP Owner's Rights under the City-EFC Agreement

A. The WWTP Owner may, by proceeding directly against the City, enforce as a third party beneficiary those provisions (and only those provisions) of the City-EFC Agreement as set forth in Section 14.04 of the City-EFC Agreement. Specifically, the WWTP Owner's third party benefit

in the City-EFC Agreement is limited solely to the following:

1. Enforcing the City's obligation to provide funding to EFC for the Upgrade at the WWTP Owner's WWTP pursuant to Section 4.01 of the City-EFC Agreement and consistent with the terms set forth in Section 4.01 of the City-EFC Agreement.

2. Enforcing the City's obligation to enter into an O&M Agreement with the WWTP Owner to operate and maintain the Regulatory Upgrades pursuant to Section 2.06 of the City-EFC Agreement.

3. Enforcing the City's agreement pursuant to Section 1.04 of the City-EFC Agreement not to pursue an enforcement action against the WWTP Owner for the violation of any term or provision of the Watershed Regulations requiring an Upgrade, a permit (including a SPDES permit), or other approval if the City fails to provide funding to EFC for the Upgrade at the WWTP Owner's WWTP pursuant to the City-EFC Agreement in a manner which allows for the timely completion of the Upgrade in compliance with the Watershed Regulations, or if EFC fails to provide any service set forth in the Scope of Services to the City-EFC Agreement, and such failure by the City or EFC directly and solely causes the WWTP Owner to violate any term or provision of the Watershed Regulations requiring such Upgrades, a permit, including a SPDES permit, or other approval. Notwithstanding the above, the City's agreement not to pursue an enforcement action shall not apply where the City or EFC is in good faith contesting the obligation to pay the WWTP Owner's request for funds. Nothing in this paragraph shall prevent the City from pursuing an enforcement action against a WWTP Owner for any violation occurring or continuing after the City pays such amount or EFC has provided such service, and after the WWTP Owner has had a reasonable period of time to implement the Upgrade.

4. Enforcing the requirement in Section 14.02 of the City-EFC Agreement that the City-EFC Agreement may not be modified or amended in any manner that materially and adversely affects the rights of a WWTP Owner of an eligible WWTP under Section 14.04 of the City-EFC Agreement or the Model Upgrade Contract attached to the City-EFC Agreement without the written

consent of such WWTP Owner, provided that such WWTP Owner does not unreasonably withhold consent to such amendment or modification.

5. Enforcing the City's agreement pursuant to and as set forth in Section 1.03 of the City-EFC Agreement.

6. Enforcing the requirement of Section 11.02 of the City-EFC Agreement.

7. Enforcing the requirement that this Agreement be consistent with the Model Upgrade Contract pursuant to Section 2.03 of the City-EFC Agreement.

8. Enforcing the provisions of Section 2.03D of the City-EFC Agreement.

9. Enforcing the provisions of Section 2.03E of the City-EFC Agreement.

B. Other than the third party interest granted to the WWTP Owner pursuant to paragraph A above, the WWTP Owner shall have no third party interest in the City-EFC Agreement, and the City-EFC Agreement is not intended to create any benefit or interest in any other third party.

Section 1.05 WWTP Owner Authorized Representative

The WWTP Owner represents that the person executing this Agreement has the legal authorization to execute this Agreement on behalf of the WWTP Owner. The WWTP Owner has designated authorized representatives who shall be either officers, agents or employees of the WWTP Owner. The designees are set forth in Appendix C. Such designation may be amended from time to time without amending this Agreement provided that the WWTP Owner notifies EFC and NYCDEP in writing in accordance with the provisions of Appendix C.

ARTICLE 2 - DESCRIPTION OF WORK

Section 2.01 Project

The WWTP Owner hereby agrees to comply with the terms, conditions and obligations set forth in the Scope of Work, and as described in Article 2 of this Agreement in the completion of the

modification to its WWTP necessary to allow the WWTP to be in compliance with the Watershed Regulations. With respect to the WWTP Owner, the parties agree that the Owner's Representative, its agents, employees and consultant will act for the WWTP Owner and perform all design, construction, inspection, letting and award and administrative services as set forth in this Agreement (exclusive of the requirements set forth in Section 2.06) on behalf of the WWTP Owner. The Owner's Representative will complete all necessary paperwork required in this Agreement to obtain reimbursement from EFC. The WWTP Owner represents that the Owner's Representative is duly authorized to act on behalf of the WWTP Owner in taking actions and performing duties that the WWTP Owner would otherwise be required and/or authorized to undertake in order to implement this Agreement including, but not limited to, the Scope of Work. The WWTP Upgrade Project may consist of the Regulatory and/or SPDES Upgrade, as described in the Preliminary Engineering Scope attached to this Agreement or as otherwise modified, as that Upgrade is approved by NYCDEP in accordance with NYCDEP approval of the Final Upgrade Plan. Alternatively, the WWTP Upgrade Project which is authorized by this Agreement may be the connection of the WWTP to an existing wastewater treatment plant, or other project which eliminates the surface discharge of treated wastewater from this facility within the Watershed, or any other process which complies with the Watershed Regulations, as NYCDEP, in its sole discretion approves. To the extent that NYCDEP has the authority to select among alternatives proposed by the WWTP Owner in the CUP, the PUP or the FUP, which alternatives in all respects conform to the requirements of the Watershed Regulations § 18-36, NYCDEP, as the case may be, will take into account the reasonable and legitimate business objectives of the WWTP Owner as well as other relevant factors such as cost and reliability.

Section 2.02 Summary of Process for Completing the Upgrade

A. The WWTP Owner shall, upon the Commencement Date, begin the work specified in the Scope of Work, subject to the right of NYCDEP to issue a Stop Work Order in accordance with Section 1.03 C. In accordance with the terms of the Scope of Work, the WWTP Owner, working with its Engineer, with assistance from EFC, shall submit a

Conceptual Upgrade Plan, and a Proposed Upgrade Plan which, upon NYCDEP approval, shall become a Final Upgrade Plan. Each of the plans submitted by the WWTP Owner shall be certified with its Engineer's P.E. Seal.

B. If the Final Upgrade Plan requires a change or modification of this Agreement, the Parties agree to execute an amendment reflecting such change or modification. After the Final Upgrade Plan has been agreed upon, and where necessary, an amendment to this Agreement has been executed, the WWTP Owner may proceed to bid and implement the Final Upgrade Plan, in accordance with the terms of this Agreement.

C. The execution of this Agreement by the WWTP Owner and development of and compliance with the Final Upgrade Plan in accordance with the terms of this Agreement shall constitute compliance by the WWTP Owner with the requirement in Section 18-36(a)(10) of the Watershed Regulations that the WWTP Owner submit and have approved by NYCDEP an operations and maintenance plan and a schedule setting forth a plan for bringing the wastewater treatment plant into compliance with the Watershed Regulations.

D. Provided that EFC and/or the City complies with their obligations to provide Program Funding pursuant to Article 3 of this Agreement and the City-EFC Agreement insofar as those obligations apply, the WWTP Owner shall complete all work under this Agreement in accordance with the Schedule of Work developed pursuant to the attached Scope of Work, but in any event no later than five (5) years from the Watershed Regulations Effective Date or any extended period of time approved by the City upon good cause showing, granted to the WWTP Owner in accordance with Section 1.03 of this Agreement.

Section 2.03 Method of Performance of Work

The WWTP Owner shall insure that all work performed by it or on its behalf shall be performed in accordance with all applicable licenses and permits, and all applicable provisions of federal, State and local law, including the provisions of SEQRA, to the extent applicable, and the Watershed Regulations, as well as the terms of this Agreement.

Section 2.04 Modifications to Final Upgrade Plan

A. Non-Emergency Modification
Except in case of an emergency as described below, the WWTP Owner or its Engineer, shall submit a proposed changes, modifications and/or amendment to the Final Upgrade Plan (each a "Change Order" and collectively "Change Orders") to EFC in accordance with the Scope of Work, for review and approval prior to the proposed commencement of any construction work potentially affected by the requested modification. The WWTP Owner or its Engineer, shall submit to EFC, any proposed Change Order, bearing the P.E. Seal of its Engineer, in the form and containing such information as required by the Scope of Work. The WWTP Owner shall commence work under the Change Order only after receipt of EFC or NYCDEP approval of the Change Order and any necessary changes to the construction schedule. Under those circumstances where NYCDEP approval of a Change Order is not required, as set forth in the Scope of Work, EFC agrees to use its best efforts to expeditiously review and make a determination with respect to a Change Order within fifteen (15) business days of receiving a complete Change Order request.

B. Modifications due to an Emergency. Where a Change Order is necessary to preserve and protect the public health, safety, or welfare, or to prevent injury to human, plant and animal life or property (including any release of insufficiently treated wastewater), the WWTP Owner, may, without prior approval, remediate the emergency or occurrence giving rise to the emergency provided that the WWTP Owner shall promptly notify EFC in writing, within no more than twenty-four hours, or within a shorter time, when practicable, of the emergency or condition giving rise to the emergency. The Parties agree to enter into a Change Order, following NYCDEP approval, reflecting such remediation as soon as reasonably possible.

C. The WWTP Owner shall keep an updated listing of all Change Orders during construction, and shall submit copies of the final complete Change Orders to NYCDEP and to EFC, in addition to providing such final Change Orders as part of the Close-Out Package submitted to EFC upon completion of the work, in accordance with the Scope of Work.

Section 2.05 EFC's Description of Work

A. EFC shall administer and disburse the Program Funds, as more fully set forth in Article 3 below, which are provided by the City to pay for the costs of the Upgrade Project.

B. EFC shall take the actions described in this Agreement which are necessary to facilitate payment of Program Funds provided by the City to the WWTP Owner under this Agreement.

C. In carrying out its work under this Agreement, EFC's obligation to disburse Program Funds to the WWTP Owner shall be limited as follows:

1. In accordance and consistent with the provisions of Article 3 hereof, where the City has failed to provide adequate Program Funds, EFC shall have no liability for the failure to make any payment, except where the City's failure to provide adequate Program Funds was due solely to EFC's acts or omissions. In addition, EFC shall have no liability for any failure to make a payment to an WWTP Owner within 45 calendar days after a Disbursement Request is submitted, unless such failure is due solely to EFC's gross negligence or willful misconduct.

2. The WWTP Owner agrees to notify EFC in writing of any failure of EFC to properly disburse Program Funds in accordance with the terms of Article 3 hereof. Any such notice shall be provided to EFC within 5 business days of the WWTP Owner's discovery of the failure, but in no event later than 90 days from the date of the relevant Disbursement Request. The limitation of liability set forth in this Section 2.05 C shall not apply where the failure to disburse Program Funds extends beyond 60 days of the date of the notice set forth in this subparagraph, except as otherwise provided in this Agreement.

3. The WWTP Owner agrees that any contract between the WWTP Owner and a Contractor to perform any work to be paid with Program Funds hereunder shall include, without limitation, a provision advising the Contractor of the provisions of this Section 2.05C.

D. Except for the services described in sub-Sections A and B above, EFC is not providing

any services, professional or otherwise, to the WWTP Owner, the Engineer or any of its agents or representatives. The work undertaken by EFC as described in this Agreement is provided to the City in accordance with the City-EFC Agreement. As such, the provisions set forth in this Agreement are not intended to modify or amend the provisions set forth in the City-EFC Agreement.

Section 2.06 Operation and Maintenance Agreement between the City and the WWTP Owner

A. The WWTP Owner shall enter into an Agreement with the City after the Final Upgrade Plan has been approved by NYCDEP and prior to commencement of Startup and Performance Testing of the Upgrade, in which the City agrees to pay for the continuing operation and maintenance costs of the Regulatory Upgrades consistent with the terms of the Watershed MOA. If EFC, in its sole discretion, does not choose to exercise the Option in accordance with Section 2.07 of this Agreement, the O&M Agreement shall also provide for the payment to the WWTP Owner of the costs associated with Startup and Performance Testing of the Upgrade and Final Acceptance by the City of the Upgrade as being in compliance with the Watershed Regulations.

B. EFC has no responsibility for the negotiation and execution of such O&M Agreements, nor for the payment of O&M costs to the WWTP Owner.

Section 2.07 Option Concerning Payment of Startup and Performance Testing Costs

A. Notwithstanding any other provision set forth in this Agreement, and subject to an amendment of the City-EFC Agreement, EFC may, at its option (Option), at any time prior to the commencement of Startup and Performance Testing and upon written notice to the WWTP Owner, elect to act as the disbursing agent for and on behalf of the NYCDEP in connection with the payment of costs associated with such Startup and Performance Testing of the WWTP Upgrade. In the event of the exercise of the Option, EFC, as disbursing agent, shall disburse costs to the WWTP Owner for such Startup and Performance Testing solely in accordance with the terms of this Section 2.07 and except as provided in this Section 2.07, EFC shall have no further obligation as disbursing agent under the Option.

B. In its role as disbursing agent for Startup and Performance Testing, EFC will have no responsibility to the City and NYCDEP, other than to disburse sums then in its possession for the Startup and Performance Testing costs as directed by NYCDEP. Accordingly, none of the advisory, technical, management or other services that EFC has provided to the City/NYCDEP pursuant to the City-EFC Agreement will be provided for Startup and Performance Testing.

C. The WWTP Owner hereby acknowledges and agrees that in the event EFC acts as disbursing agent for Startup and Performance Testing, EFC shall have no liability to the WWTP Owner except to deliver the funds which have been delivered to EFC by NYCDEP for the Startup and Performance Testing costs of the Upgrade Project and which NYCDEP has instructed to be disbursed. The WWTP Owner acknowledges and agrees that EFC is acting as a stakeholder only in connection with the funds associated with the costs of Startup and Performance Testing. Accordingly, in the event of any dispute between the WWTP Owner and NYCDEP in connection with the costs of Startup and Performance Testing, the WWTP Owner hereby acknowledges and agrees that EFC may commence an interpleader action in the court of competent jurisdiction in which the WWTP Owner is located for deposit into court of the costs associated with the Startup and Performance Testing then in EFC's possession. Upon such deposit, the WWTP Owner acknowledges that EFC shall have no further obligation to the WWTP Owner under this section.

D. If EFC is not acting as disbursing agent, all actual and reasonable costs for Startup and Performance Testing and Final Acceptance will be paid to the WWTP Owner by NYCDEP through the O&M Agreement.

E. All invoices and requests for payments in connection with the Startup and Performance Testing of the Upgrade shall be forwarded by the WWTP Owner directly to NYCDEP.

F. Not more than once every thirty (30) calendar days during Startup and Performance Testing, and subject to the availability of Program Funds from NYCDEP, EFC shall pay the amount to the WWTP Owner which was authorized by

NYCDEP, within ten (10) business days of receipt of such instruction from NYCDEP.

G. In order to be eligible to receive payment of Program Funds for Startup and Performance Testing, the WWTP Owner shall have provided NYCDEP with fully executed copies of agreements entered into with any Party related to Startup and Performance Testing.

H. The WWTP Owner shall provide NYCDEP with eligible cost invoices and proof of payment of such invoices within forty-five (45) calendar days of disbursement of funds to the WWTP Owner. Proof of payment submitted by the WWTP Owner shall be sufficient to allow NYCDEP to document that billings and invoices were paid, such as copies of the payment application, invoices, purchase orders, canceled checks, payroll and machinery records certified by the WWTP Owner, and other forms of cost documentation as may be requested by NYCDEP.

I. On a quarterly basis, or more often if NYCDEP deems necessary, NYCDEP shall complete a full review of all requests against the invoices, and supporting documentation, as well as the contract documents and specifications, in order to confirm payment of eligible costs.

J. Where NYCDEP determines that the WWTP Owner has provided inadequate documentation or has disbursed funds for ineligible costs, NYCDEP shall direct EFC to make adjustments in the payment to the WWTP Owner in subsequent disbursement(s). Nothing in this paragraph is intended to reduce any claims that the WWTP Owner may have against NYCDEP or the City to be reimbursed for all eligible costs, including the right to commence an action in the court of competent jurisdiction for reimbursement for the full amount of eligible costs.

K. The City and NYCDEP reserve their right to audit the documentation submitted by the WWTP Owner to NYCDEP and to reject such documentation as insufficient, disallowing costs where adequate documentation is not subsequently provided by the WWTP Owner to NYCDEP.

L. The WWTP Owner agrees to make its financial records related to the Startup and Performance Testing available to NYCDEP and the City as they may respectively deem necessary. The

WWTP Owner shall provide duplicate copies of all such records upon request.

ARTICLE 3 - PAYMENT GENERALLY

Section 3.01 Total Contract Amount

The aggregate total of all expenses paid for under this Agreement is \$470,423.00, the Total Contract Amount. Such expenses are for SPDES and/or Regulatory Upgrades as set forth in Section 3.02 D and for SPDES Reimbursements as set forth in Section 3.04 A.

Section 3.02 Payment

A. Subject to the procedures set forth in Section 3.03 of this Agreement, EFC shall pay the WWTP Owner, for its actual and reasonable expenses, in implementing the Scope of Work, commencing with the execution of this Agreement. Payments to the WWTP Owner shall be limited by Section 3.02 B, C and D below.

B. The "actual and reasonable expenses" shall be used solely for the purpose of implementing the Scope of Work as approved by NYCDEP in accordance with the Agreement including, if applicable in accordance with Section 2.07 of this Agreement, any costs associated with Startup and Performance Testing, and shall cover:

1. Direct salary and overhead (calculated at no more than 40% multiplied times the direct salary costs incurred) for the actual hours spent by the WWTP Owner or its employees performing any of the following tasks ("Force Account Work" in accordance with Appendix B), on an hourly rate basis at current labor contract rates and/or prevailing wage rates for the following work:

a. Engineering or project management, including the planning, preparation of bidding documents, plans and specifications, site permit applications, layout and quality control supervision;

b. Field management by a project management superintendent where appropriate;

c. Construction work;

d. Administrative costs directly attributable to the work; and

e. Litigation Expenses as defined herein. NYCDEP approval for Litigation Expenses shall not be unreasonably withheld, provided proper justification is provided for the need for such Litigation Expenses;

2. The costs of the WWTP Owner's Representative to perform work under this Agreement in accordance with the attached Appendix D;

3. If the WWTP Owner or Owner's Representative retains or engages a consultant or consultants to perform any of tasks set forth in (1) above, the cost of such work;

4. The cost of all subcontracted construction work, approved by NYCDEP as part of the Final Upgrade Plan and bidding approval process, and performed by the subcontractor;

5. The cost of all work resulting from approved and emergency Change Orders, modifications and/or amendments to the Final Upgrade Plan (i.e., Change Order work) processed in accordance with this Agreement and the Scope of Work, determined on a time and material basis or based on a negotiated cost agreed to by NYCDEP or EFC;

6. The cost of acquiring any interest in real property necessary to effectuate the Upgrade, including related transaction costs;

7. Other necessary material required for the work and the cost of the rental and operation of necessary equipment (excluding small tools); and

8. Premiums for required insurance or bonds or new endorsements, in accordance with Sections 5.01 and 8.

C. The WWTP Owner acknowledges and agrees that EFC's obligation for payment of the above-mentioned items is contingent upon (i) receipt of Program Funds by EFC from NYCDEP, (ii) NYCDEP approval of such costs, as required, in accordance with this Agreement, (iii) the WWTP

Owner's compliance with the procedures set forth in this Agreement including performing work in accordance with the Final Upgrade Plan and (iv) EFC's subsequent review of adequate documentation of costs completed in accordance with Section 3.03. In the event any of the foregoing contingencies fail to occur, EFC shall have no liability to the WWTP Owner for the payment of Program Funds.

D. The aggregate total of all such expenses payable pursuant to this Section shall not exceed \$470,423.00. Such amount does not represent a cap on the actual and reasonable expenses ultimately owed to the WWTP Owner for the Upgrade of the WWTP, but rather a non-final evaluation of the estimated amounts that will be necessary to accomplish the Upgrade. Of the said amount, \$470,423.00 is the current estimated approved amount payable for Regulatory Upgrades and \$0.00 is the maximum approved amount payable for SPDES Upgrades. The amount for Regulatory Upgrades shall be increased, as necessary, to reflect any increase in the total cost of the project, as approved by NYCDEP, as reflected in the Final Upgrade Plan, as well as any approved Change Orders not within this amount. Any such increase shall require a written amendment to this Agreement. The amount for SPDES Upgrades may be increased, as necessary and where SPDES Upgrades Funds are available, to reflect any increase in the total cost of the project, as approved by NYCDEP, as reflected in the Final Upgrade Plan, as well as any approved Change Orders not within this amount. Any such increase shall require a written amendment to this Agreement.

E. Any Program Funds disbursed to the WWTP Owner hereunder shall be used exclusively for the cost of the work performed pursuant to this Agreement.

F. In the event of any material breach of the terms of this Agreement by the WWTP Owner, and in the event that the WWTP Owner does not cure the breach within thirty (30) calendar days of written notice of such breach provided to the WWTP Owner by EFC or the City, EFC or the City shall be entitled, in addition to any other rights or remedies available to it at law or in equity, to withhold payments to the WWTP Owner, in an amount proportionate to the breach. If a material breach of the Agreement cannot be cured within thirty (30) calendar days, and if the breaching Party commences appropriate actions to cure the breach prior to the end of the thirty days and diligently

prosecutes the actions necessary to cure the breach, payments pursuant to this section shall not be unreasonably withheld.

Section 3.03 Payment Procedures

A. Not more than once every ninety (90) calendar days during the Term of this Agreement, and subject to the availability of Program Funds from NYCDEP, EFC shall pay fully executed Disbursement Request(s) received from the WWTP Owner, or its authorized representative, by EFC, at the proper place and in the proper form as described in Appendix C to this Agreement, within forty-five (45) calendar days of receipt, except for the Close-Out Payment which shall be paid in accordance with Task 4 of the Scope of Work.

B. The WWTP Owner shall provide EFC with eligible cost invoices and proof of payment of such invoices with the disbursement requests. Proof of payment submitted by the WWTP Owner shall be sufficient to allow EFC to document that billings and invoices were paid, such as payment applications, copies of invoices, purchase orders, canceled checks, payroll and machinery use records certified by the WWTP Owner, and other forms of cost documentation as may be reasonably requested by EFC. Additionally, all construction costs shall be accompanied by the "Engineer Certification" in the form attached hereto in Appendix C.

C. In order to be eligible to receive payment of Program Funds for Upgrade costs, the WWTP Owner shall have provided EFC with fully executed copies of the applicable agreements for the Upgrade, including without limitation, land acquisition, construction, and goods in excess of Ten Thousand Dollars (\$10,000.00), and professional services related to the Upgrade Project. EFC shall not be obligated to disburse Program Funds for Upgrade costs until EFC has received copies of the applicable fully executed NYCDEP approved agreements for such land acquisition, construction, goods and services as described above. All project costs not covered by the agreements described above shall be disbursed subject to NYCDEP approval of such Upgrade costs, which approval shall not be unreasonably withheld.

D. On a quarterly basis, EFC shall complete a full review of all requests against the invoices, and supporting documentation, as well as the contract documents and specifications, in order to

confirm payment of eligible costs. EFC and/or NYCDEP shall furnish its request for additional documentation or its disapproval of a proof of payment within forty-five calendar days of the disbursement of funds, time being of the essence

E. Where EFC and/or NYCDEP determine that the WWTP Owner has provided inadequate documentation or has utilized funds for ineligible costs, upon written notification by NYCDEP, EFC shall make adjustments by deducting an appropriate amount from subsequent payments to the WWTP Owner in subsequent disbursement(s). WWTP Owners may contest this determination made by EFC and/or NYCDEP through a dispute resolution process to be established by EFC. EFC shall make any appropriate adjustments in payments to the WWTP Owner consistent with the settlement of issues through the dispute resolution process. Nothing in this paragraph is intended to reduce any claims the WWTP Owner may have against EFC, NYCDEP or the City to be reimbursed for all eligible costs, including the right to commence an action in the court of competent jurisdiction for reimbursement for the full amount of eligible costs.

F. The City and NYCDEP reserve its right to audit the documentation submitted by the WWTP Owner to EFC, and to reject such documentation as insufficient, disallowing costs where adequate documentation is not subsequently provided by the WWTP Owner to NYCDEP.

G. The WWTP Owner agrees to make its financial records related to the Upgrade Project available to EFC and the City as they may respectively deem necessary. The WWTP Owner shall provide duplicate copies of all such records upon request.

Section 3.04 SPDES Reimbursement

A. Notwithstanding any other provision of this Agreement and subject to Section 3.01 of this Agreement, EFC will act as disbursing agent to disburse to the WWTP Owner reimbursements for NYCDEP certain approved SPDES work which was completed prior to the Commencement Date of this Agreement in accordance with Paragraph 121(b) of the Watershed MOA ("Reimbursement"). The total for reimbursable SPDES work shall not exceed \$0.00. EFC, as disbursing agent, shall disburse costs to the

WWTP Owner for Reimbursements solely in accordance with Section 3.04 B of this Agreement. The WWTP Owner hereby acknowledges and agrees that EFC while acting as disbursing agent for the Reimbursements, shall have no liability to the WWTP Owner except to disburse the funds which have been delivered to EFC by NYCDEP for the Reimbursements and which NYCDEP has instructed EFC to disburse. The WWTP Owner acknowledges and agrees that EFC is acting as a stakeholder only in connection with the funds associated with the Reimbursements. Accordingly, in the event of any dispute between the WWTP Owner and NYCDEP in connection with the costs of the Reimbursements, the WWTP Owner hereby acknowledges and agrees that EFC may commence an interpleader action in the court of competent jurisdiction in which the WWTP Owner is located for deposit into court of the costs associated with the Reimbursements then in EFC's possession. Upon such deposit, the WWTP Owner acknowledges that EFC shall have no further obligation to the WWTP Owner. EFC may amend the total for reimbursable SPDES work upon the WWTP Owner providing the appropriate cost documentation to NYCDEP as hereinafter set forth and upon subsequent written authorization of such amendment by NYCDEP, which amendment is subject to SPDES Upgrade Funds being available.

B. Notwithstanding any other provision of this Agreement and subject to Section 3.01 of this Agreement, in order to be eligible to receive Reimbursements, the WWTP Owner shall have provided NYCDEP with all cost documentation related to the Reimbursements, including where available, fully executed copies of all agreements entered into with any party. All invoices for Reimbursements shall be forwarded by the WWTP Owner directly to NYCDEP. The WWTP Owner shall provide NYCDEP with eligible cost invoices and proof of payment of such invoices and NYCDEP will use its best efforts to review the same within forty-five (45) calendar days of their receipt. Proof of payment submitted by the WWTP Owner shall be sufficient to allow NYCDEP to document that billings and invoices were paid, such as copies of payment applications, invoices, purchase orders, canceled checks, payroll and machinery use records certified by the WWTP Owner, and other forms of cost documentation as may be requested by NYCDEP. EFC shall pay the Reimbursement amount to the WWTP Owner which was authorized by NYCDEP, within ten (10)

business days of receipt of such written authorization from NYCDEP. The WWTP Owner acknowledges and agrees that EFC's obligation to disburse Reimbursements is subject to the availability of funds from NYCDEP. The City and NYCDEP reserve their right to audit the documentation submitted by the WWTP Owner to NYCDEP and to reject such documentation as insufficient, disallowing costs where adequate documentation is not subsequently provided by the WWTP Owner to NYCDEP. The WWTP Owner agrees to make its financial records related to the Reimbursements available to NYCDEP and the City as they may respectively deem necessary. The WWTP Owner shall provide duplicate copies of all such records upon request.

C. In its role as disbursing agent for SPDES Reimbursement, EFC will have no responsibility to the City, NYCDEP and/or the WWTP Owner, other than to disburse sums then in its possession for the SPDES Reimbursement costs as directed by NYCDEP.

ARTICLE 4 - PROCUREMENT OF GOODS AND SERVICES

Section 4.01 Competitive Bidding of the Final Upgrade Plan Work

The WWTP Owner shall comply with all public bidding requirements applicable to the WWTP Owner by State law.

Section 4.02 Selection of Engineering Services

A. Any consultant/contractor hired by the WWTP Owner for engineering or design work under this Agreement must be either chosen from the Pre-Qualified Engineers List prepared by EFC and provided to the WWTP Owner, or selected by the WWTP Owner as the highest qualified engineer or engineering firm for engineering services consistent with the WWTP Owner's standard selection practices and applicable law.

B. The WWTP Owner shall use the Engineer Request for Proposals ("Engineer RFP") attached to the Scope of Work as Attachment A, as the basis for its contract and scope of services with the engineers. The Engineer Proposal received from each engineer shall include the essential elements also set forth in Attachment A of the Scope of Work. The

Owner's Representative may amend the Engineer Scope of Services, (attached hereto as Appendix A, Attachment A, Section 2) in order to define the level of bidding and/or construction management services that will be undertaken by the Engineer. The Owner's Representative will provide a copy of any such amendment to EFC with the Engineer proposals.

C. The WWTP Owner shall submit the top three proposals along with the name of, and negotiated fee proposal for the highest qualified professional firm for Engineering Services, to EFC for review. EFC shall forward the Engineer Proposal to NYCDEP for its review and approval. NYCDEP shall not unreasonably withhold approval of the WWTP Owner's named highest qualified professional firm. In the event NYCDEP withholds approval of the WWTP Owner's named highest qualified professional firm NYCDEP shall set forth the reason(s) for doing so in writing.

D. Within a reasonable time of receipt by EFC of NYCDEP's written approval of the Engineer Proposal, EFC shall authorize the WWTP Owner in writing to prepare a contract with the approved Engineer.

E. The WWTP Owner shall incorporate the NYCDEP-approved Engineer RFP, Engineer Proposal, and Standard Engineer Contract Clauses, as well as any of the other necessary attachments to the Scope of Work, into the Engineer Contract between the WWTP Owner and the Engineer/Engineering firm hired by the WWTP Owner. The WWTP Owner shall submit the proposed Engineer's contract to EFC for its review and forwarding to NYCDEP for their approval. Upon NYCDEP's approval of the Engineer's contract, EFC shall authorize the WWTP Owner in writing to execute a contract with the Engineer. The WWTP Owner agrees that it shall exercise any rights set forth in such Engineer Contract and legally enforce such rights, upon direction from NYCDEP or EFC.

F. After executing the Engineer Contract with the Engineer, the WWTP Owner shall not agree to changes in the Engineer Contract that would increase the amount that the Engineer may receive or vary the terms required by this Agreement to be incorporated into the Engineer Contract as set forth in sub-Section E above, without NYCDEP approval

of such changes; such approval shall not be unreasonably withheld.

G. Notwithstanding the requirements of the above section, nothing herein shall be construed to run contrary to New York State law.

Section 4.03 Procurement of Non-Engineering Contracts

A. After NYCDEP final approval of the Final Upgrade Plan, and execution of an amendment to this Agreement incorporating modifications where necessary, EFC shall provide the WWTP Owner with a Notice to Proceed with Bid Solicitation. Upon receipt of bid proposals from contractors, the WWTP Owner shall compile and forward to EFC the recommended construction contracts for the two lowest responsible bidders, along with completed Uniform Contracting Questionnaire forms, confirmation that the bidding process has been undertaken in accordance with the WWTP Owner's applicable law and this Agreement.

B. The WWTP Owner will award the construction contract to the lowest responsible and reliable bidder as determined by the WWTP Owner utilizing the Uniform Contracting Questionnaire.

C. Upon award of contracts by the WWTP Owner, the WWTP Owner shall provide EFC with documentation that all performance and payment bonds required by Section 5.01 have been received and are in accordance with this Agreement, that proof of all required insurance has been obtained, as well as confirmation that other contractor submittals are in order and in conformity with this Agreement. Additionally, the WWTP Owner shall provide original copies of all bonds and insurance certificates and the proposed construction documents to EFC, to be forwarded to NYCDEP for its review and approval.

D. Upon review and approval of such documentation, where necessary, and receipt of NYCDEP's written confirmation that the construction contracts, bonds and insurance are complete in accordance with this Agreement. EFC shall provide the WWTP Owner with a Notice to Proceed with Execution of Contracts and Construction. Upon execution of construction contracts between the WWTP Owner and the

successful bidder(s), the WWTP Owner shall submit to EFC for filing, copies of bid documents, bonds, insurance certificates, a fully State approved contract and a notice to proceed with respect to each contract awarded to a successful bidder.

E. Once the costs of the Final Upgrade Plan have been agreed upon by the WWTP Owner and NYCDEP, the WWTP Owner shall not enter into any contracts with Contractors if such contracts are greater than the costs allocated by the Final Upgrade Plan to the work to be performed under such contract without NYCDEP approval; such approval shall not be unreasonably withheld.

F. After execution of a contract by the WWTP Owner, the WWTP Owner shall not agree to changes in such contract if the changes would result in an increase in the cost of such contract without NYCDEP approval; which approval shall not be unreasonably withheld.

G. Notwithstanding the requirements of the above section, nothing herein shall be construed to run contrary to New York State Law.

Section 4.04 Contract between WWTP Owner and Contractor

A. The WWTP Owner agrees that any contract between the WWTP Owner and a Contractor to perform any work to be paid with City funds hereunder shall include without limitation the following provisions:

1. A requirement that the Contractor perform all work in accordance with the applicable terms of this Agreement;

2. A statement and a requirement that the Contractors shall agree to indemnify the City and EFC and assume liability for injuries on the same basis identified in this Agreement, pursuant to Article 13;

3. A requirement that all contracted work, with the exception of professional services, require a budget, a scope of work, a progress schedule for completion of the work within specified milestones and payment which is dependent upon completion of the work within the specified period of performance;

4. A statement and requirement that nothing contained in the contract shall impair the rights of the City and EFC under this Agreement or the Watershed MOA;

5. A statement and requirement that nothing contained in the contract shall create any contractual relation between the Contractor and the City and EFC;

6. A statement and requirement that the Contractor will not engage in any unlawful discrimination in hiring employees under the contract based upon race, creed, color, national origin, sex, age, disability, marital status or sexual orientation; and

7. A requirement that Contractors performing public work within the meaning of Section 220 of the New York State Labor Law pay not less than the prevailing wage to laborers, workmen and mechanics performing such public work pursuant to Section 220 and comply with all other applicable provisions of Section 220 of the Labor Law; and

8. A requirement that the Contractor provide the insurance and bonding required by this Agreement.

B. The WWTP Owner shall enforce the foregoing provisions of its contracts where (i) WWTP Owner knows of the existence of a breach of the foregoing provisions by the Contractor, or (ii) the WWTP Owner, maintaining a level of oversight consistent with that of a similarly situated reasonable business person, should have known of the existence of such breach.

C. The breach of this Section by the WWTP Owner shall be deemed a material breach of this Agreement, entitling EFC and/or the City to withhold payments to the WWTP Owner in accordance with Section 3.01 F of this Agreement, or to terminate this Agreement in accordance with Article 11.

D. The WWTP Owner remains fully responsible to EFC and NYCDEP for the satisfactory completion of the WWTP Owner's Scope of Work.

ARTICLE 5 - BONDS

Section 5.01 Bonds

A. In addition to any other bonds required by law, if any, for the completion of the work specified in the Final Upgrade Plan, the WWTP Owner shall require the following bonds from construction contractors who bid on or are awarded any contract from the WWTP Owner that exceeds \$50,000.00.

1. From each construction contractor who bids on a construction contract from the WWTP Owner for any portion of such work - a bid bond or other security satisfactory to NYCDEP in an amount not less than five percent (5%) of the amount bid by such contractor for such contract, to secure the contractor's commitment to honor such bid and enter into a contract with the WWTP Owner at the price bid, if awarded the contract in question; and

2. From each construction contractor who is awarded a construction contract from the WWTP Owner for any portion of such work - (x) a performance bond, or other security satisfactory to NYCDEP, in an amount not less than one hundred percent (100%) of the amount of such contract, to secure the faithful performance of such contract by the contractor and the completion of all work required thereunder, and (y) a payment bond in compliance with the State Finance Law Section 137, or other security satisfactory to NYCDEP, in an amount not less than one hundred percent (100%) of the amount of such contract, to secure the prompt payment of all monies due and owing to all persons furnishing labor or materials in prosecution of such work.

Required bonds shall be submitted to EFC (attn: Director of Operations and Administration) for forwarding to NYCDEP for review and approval prior to commencing any work under the contract in question. All bonds submitted shall be on a standard state form.

B. Each bond furnished pursuant to sub-section A above shall be issued by a surety company qualified to do business in the State of New York and shall name the City and the WWTP Owner as obligees.

ARTICLE 6 - TRAINING

Section 6.01 Training

The WWTP Owner agrees that to the extent possible, in the acquisition of the equipment and appurtenances in connection with the Upgrade Project, training shall be provided by the vendor/manufacturer, such training to be provided in accordance with the requirements specified by the Engineer in accordance with the Scope of Work. Charges for any supplemental training associated with the Regulatory Upgrade must be pre-approved by NYCDEP. Training shall be part of Upgrade Startup and Performance Testing in accordance with the Scope of Engineering Services.

ARTICLE 7 - STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

Section 7.01 SPDES Permits

A. The WWTP Owner agrees to cooperate with NYSDEC in modifying the SPDES permit for the WWTP to reflect the effluent limits and technological requirements of the Watershed Regulations and the schedule set forth in the Final Upgrade Plan. The funding for the Upgrade at the WWTP to be provided hereunder, however, is not dependent upon the WWTP Owner obtaining a modified SPDES permit. The inclusion of the effluent limits and technological requirements of the Watershed Regulations in a WWTP's SPDES permit is not and should not be considered evidence of any federal law, regulation or enforceable standard otherwise applicable to a WWTP. Nothing herein limits or prevents a WWTP Owner from seeking clarification in its SPDES permit that the permit modification is done by consent. Further, the WWTP Owner's consent to the inclusion of the effluent limits and technological requirements of the Watershed Regulations in its SPDES permit shall not be considered evidence of any federal or State law, regulation, or enforceable standard otherwise applicable to a WWTP.

B. The WWTP Owner shall be responsible for obtaining any future SPDES modifications that may be required by law and/or pursuant to the terms of this Agreement.

ARTICLE 8 - INSURANCE

Section 8.01 Insurance

A. In accordance with the long standing policy of the State of New York to not insure against risks associated with the operation of State facilities or property, the New York State WWTP Owner retains the risk of exposure to liability for personal injury or property damage, through its waiver of immunity to liability and action, which waiver is additionally supported by an annual multi-million dollar claims appropriation to the State Court of Claims.

B. Before any work is commenced under any contract between the WWTP Owner and the Engineer, and under any contract between the WWTP Owner and any other professional consultant (excluding attorneys) engaged or retained to assist or advise the WWTP Owner in connection with any of the work contemplated by the Scope of Work, the WWTP Owner agrees to cause the Engineer or the consultant (as the case may be), to procure and maintain the amounts and forms of insurance covering the Engineer or the consultant as required by applicable state law and practices and in accordance with the attached Appendix H.

C. Before any work is commenced under any contract between the WWTP Owner and any Contractor selected to perform any of the work covered by the Scope of Work (including construction of any portion of any Regulatory or SPDES Upgrades hereunder), the WWTP Owner agrees to cause such Contractor to procure and maintain the amounts and forms of insurance covering the Contractor as required by applicable state law and practices and in accordance with the attached Appendix H.

D. Copies of all policies, endorsements, certificates or other documents evidencing proof of insurance required by applicable state law and practices for the Contractor and Engineer shall be furnished to EFC (attn: Director of Operations and Administration) for forwarding to NYCDEP for approval prior to any disbursement of funds under this Agreement. EFC and the City shall be named as additional insureds on all commercial general liability policies held by the Engineer or the Contractors. All certificates or documents evidencing the required insurance shall name EFC and the City as certificate holders and must unconditionally grant

to EFC and the City sixty (60) calendar days' written notice of cancellation or non-renewal. Notice which contains qualifying language such as "Endeavor" or any other language seeking to limit the liability of the insurer for failure to give 60 days prior written notice is not acceptable.

ARTICLE 9 - PERSONNEL

Section 9.01 Employees

A. The WWTP Owner agrees that, EFC, its employees, agents, contractors, subcontractors and/or consultants, are independent contractors and not employees of the WWTP Owner or the City or any of its departments or agencies. In accordance with their status as independent contractors, neither EFC nor its employees or agents, contractors, subcontractors and/or consultants will hold themselves out as, nor claim to be, officers or employees of the WWTP Owner or the City or any of its departments or agencies. Likewise, EFC agrees that the WWTP Owner and its employees, agents, contractors, subcontractors and/or consultants are independent contractors and not employees of EFC or the City or any of its departments or agencies. In accordance with their status as independent contractors, neither the WWTP Owner nor the Owner's Representative nor its employees or agents, contractors, subcontractors and/or consultants will hold themselves out as, nor claim to be, officers or employees of EFC or the City or any of its departments or agencies.

B. EFC, the WWTP Owner, and the Owner's Representative alone are each responsible for the work, direction, compensation and personal conduct of each of their employees, agents, contractors, subcontractors and/or consultants while engaged under this Agreement.

C. Nothing contained in this Agreement shall impose any liability or duty on the Parties for the acts, omissions, liabilities or obligations of the other Parties, or of any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the other Parties or the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, workman's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.

ARTICLE 10 - RECORDS AND REPORTS

Section 10.01 General

The WWTP Owner agrees that a copy of any and all non-privileged written materials and documents that are prepared pursuant to this Agreement shall be forwarded to EFC and the City upon request. EFC and the City shall have the right to use all non-privileged and non-confidential written materials, documents and information that are gathered or prepared pursuant to this Agreement for any purpose deemed appropriate by EFC or the City.

Section 10.02 Maintenance of Records

The WWTP Owner shall maintain complete and accurate records in readily accessible files on all of its activities in connection with this Agreement. Such records shall include, but are not limited to, the Close-Out Package, and financial records detailing the receipt, management, and disbursement of all funds provided pursuant to this Agreement. The WWTP Owner shall maintain all records relating to this Agreement for a period of at least seven (7) years after completion of the Upgrade Project.

Section 10.03 Audit and Inspection

A. This Agreement is subject to audit by EFC, the State, including the State Comptroller, and by the City, including the City Comptroller, to the extent authorized by State and/or local law, including Section 93 of the New York City Charter.

B. The WWTP Owner shall submit such documentation and justification in support of expenditures under this Agreement as may be required by EFC, the State, including the State Comptroller, and the City, including the City Comptroller, so that they may evaluate whether the expenditures were made in accordance with this Agreement and shall make its program related records available to the State, including the State Comptroller, and the City, including the City Comptroller, as they consider necessary.

C. The WWTP Owner agrees to allow EFC, NYCDEP and the City access to the WWTP, and its environs, to permit inspection and observation of the work, and the operation and maintenance of the equipment during the period this Agreement is in effect.

Section 10.04 Monthly Reports

The WWTP Owner shall submit to EFC and the City progress reports with respect to the Scope of Work, in the form set forth in Appendix F to this Agreement. The reports shall be submitted each month, not later than the 10th day of the following month and at the end of the term of this Agreement. Upon the written consent of NYCDEP with notice to EFC, progress reporting requirements as set forth herein may be modified or amended. Failure to provide the report in accordance with this Section shall be deemed to be a material breach of this Agreement as set forth in Article 11.

Section 10.05 Budgets and Cost Estimates

A. The WWTP Owner shall provide EFC with an Annual Budget, in the form set forth in this Agreement as Appendix G, in order to provide EFC with a long range projected estimate of costs for the upcoming year. Such Annual Budgets shall be submitted to EFC on or before February 1st of each year and shall estimate the need for funding from July 1st to June 30th of each year during the Term of this Agreement.

B. As part of its Disbursement Request in accordance with Article 3 of this Agreement, and in the form attached to this Agreement as Appendix C, the WWTP Owner shall provide EFC with cost estimate information which shall update the information contained in the Annual Budget and shall provide EFC with the WWTP Owner's reasonable updated estimation of costs reasonably expected to be incurred in each month of the remainder of the Annual Budget period. If the Disbursement Request is not submitted in any given month, then the WWTP Owner shall provide EFC with the updated estimation of costs with the monthly progress reports required pursuant to Section 10.04 of this Agreement.

C. In addition to the above information, the WWTP Owner shall provide EFC with information with respect to any costs or expenses expected to be incurred, and not previously reported to EFC in accordance with sub-Sections A and B above. The WWTP Owner shall provide such information to EFC as soon as is practicable.

D. The WWTP Owner acknowledges that failure to provide the cost reporting information set forth in this Section may jeopardize the WWTP

Owner's ability to receive Program Funds on a timely basis.

ARTICLE 11 DEFAULT, SUSPENSION OR TERMINATION

Section 11.01 Default, Suspension and Termination

A. If either Party defaults in the observance or performance of any material terms of this Agreement, and such default continues for more than thirty (30) calendar days after written notice of such default is received by the defaulting party from the non-defaulting party, the non-defaulting party may (in addition to any other rights or remedies available at law or in equity) suspend work or terminate this Agreement in accordance with Section 11.02 upon written notice to the defaulting party. If a material breach of the Agreement cannot be cured within thirty (30) calendar days, the Agreement may not be terminated if the breaching Party commences appropriate actions to cure the breach prior to the end of the thirty days and diligently prosecutes the actions necessary to cure the breach.

B. Where a default remains uncured by a defaulting party within the period set forth in Section 11.01A and proper notice has been provided in accordance with Sections 11.01 and 11.02 by a non-defaulting party, the non-defaulting party shall have the right to terminate this Agreement, at any time thereafter, by providing written notice to the other, specifying an effective date of termination, which date shall be no less than ten business days from the date such notice is sent.

C. In the event the WWTP Owner, after due notice set forth in Sub-Section A above and subject to the provisions of Section 3.01 (F), fails to perform any material term or covenant of this Agreement, or fails to progress the work in accordance with the Schedule of Work, EFC may upon notification to NYCDEP, take such other and further action as may be necessary to protect its and the City's interest, including without limitation, the withholding of payments from the WWTP Owner or the assigning of the Agreement to the City. Where the construction of the Upgrade Project has commenced, the City shall have the right to enforce specific performance of completion of the construction of the Upgrade Project in accordance with the term and conditions of this Agreement.

Section 11.02 Termination and Assignment Procedures

Upon termination of this Agreement, whether by the election of a non-defaulting party due to the default of the other Party or the expiration of its terms or otherwise, the following procedures shall be followed:

A. EFC's Rights of Termination. If the WWTP Owner is the defaulting party, EFC may terminate and/or assign this Agreement upon notice in writing to the WWTP Owner, with such notice setting forth a termination and/or assignment date that is no less than ten (10) business days after the date such notice is sent. In the event of termination, EFC agrees to assign all of its right, title and interest to enforce, and obligations under, this Agreement, in whole, or in part, to the City. The City shall have a direct cause of action against the WWTP Owner, its agents, employees and subcontractors for monetary or injunctive relief arising out of the termination and/or assignment of this Agreement. EFC's termination and/or assignment of this Agreement does not relieve whatever obligation the City may have under Paragraph 141 of the Watershed MOA to fund upgrades at the WWTP.

B. The WWTP Owner's Rights of Termination. If EFC is the defaulting party, the WWTP Owner may terminate this Agreement upon notice in writing to EFC, with such notice setting forth a termination date that is no less than ten (10) business days after the date such notice is sent. Such termination shall result in the assignment of EFC's rights and obligations of this Agreement to the City. The WWTP Owner's termination of this Agreement shall, in no way, relieve the WWTP Owner from complying with any and all applicable laws, rules, and regulations, including the Watershed Regulations, and/or any terms of this Agreement that may survive or extend beyond the Agreement's termination. In addition, the WWTP Owner's termination shall not affect the City's obligations under the Watershed MOA.

C. In the event this Agreement is terminated by either Party or assigned by EFC to the City, EFC shall not be responsible for any further obligation incurred pursuant to this Agreement after the termination and/or assignment date. Any obligation necessarily incurred by the WWTP Owner pursuant to this Agreement prior to receipt of notice of termination, and falling due after such date, shall be

paid by EFC in accordance with the terms of this Agreement. In the event that EFC terminates this Agreement, the WWTP Owner shall refund to EFC any monies advanced to the WWTP Owner pursuant to this Agreement, except those funds which are necessary to discharge outstanding obligations incurred by the WWTP Owner before the date of termination, in compliance with this sub-Section C. In the event this Agreement is assigned by EFC to the City, the City shall assume all rights and obligations of EFC under this Agreement and EFC shall no longer have any rights or obligations under this Agreement.

Section 11.03 Force Majeure

In the event EFC or the WWTP Owner cannot comply with the terms and conditions of this Agreement because of an act of God, war, strike or other condition as to which conduct by EFC or the WWTP Owner, as applicable, was not the proximate cause, EFC's or the WWTP Owner's performance hereunder may be excused or delayed provided EFC or the WWTP Owner, as applicable, notifies the other Party to this Agreement and NYCDEP, in writing within ten (10) calendar days of obtaining knowledge of such condition and requests an appropriate extension of the relevant terms and conditions of this Agreement from the other Party and NYCDEP, as appropriate, and further provided that EFC or the WWTP Owner makes its best efforts to provide for alternate arrangements to fulfill the terms and conditions of this Agreement.

ARTICLE 12 - REPRESENTATIONS AND WARRANTIES

Section 12.01 Status and Authority

A. Status and Authority of WWTP Owner. The WWTP Owner represents and warrants that:

1. The WWTP Owner has all requisite power and authority to execute, deliver and perform this Agreement.

2. This Agreement has been duly authorized by all necessary action on the part of the WWTP Owner and has been duly executed and delivered by the WWTP Owner and, assuming due execution and delivery by EFC, constitutes a legal, valid, binding and enforceable obligation of the

WWTP Owner subject to New York State Attorney General and Office of New York State Comptroller approval.

3. The WWTP Owner has all the requisite rights, power and authority to operate and modify the WWTP and to perform its obligations under this Agreement.

B. Status and Authority of EFC. EFC represents and warrants that:

1. EFC has all requisite power and authority to execute, deliver and perform this Agreement.

2. This Agreement has been duly authorized by all necessary action on the part of EFC and has been duly executed and delivered by EFC and, assuming due execution and delivery by the WWTP Owner, constitutes a legal, valid, binding and enforceable obligation of EFC.

Section 12.02 Conflict of Interest

No officer, director, or employee of EFC shall participate in any decision relating to this Agreement which affects her/his personal interest or the interest of any corporation, partnership or association other than EFC, in which s/he is, directly or indirectly, interested.

ARTICLE 13 - INDEMNIFICATION

Section 13.01 Indemnification

A. The WWTP Owner agrees to indemnify the City and EFC and save them harmless from all claims, liabilities, losses or expenses of every character whatsoever (including EFC's reasonable attorney's fees) relating to or arising out of this Agreement, where such injury or damage is the result of the WWTP Owner's negligence occurring while working on activities relating to this agreement. In the event such injury or damage is caused by the combined negligence of the Parties, each Party shall be responsible for its relative culpability. Where the WWTP Owner and EFC are both named defendants, the WWTP Owner and EFC shall endeavor to enter into an agreement to cooperate in defense strategies and when appropriate, joint representation by counsel.

B. EFC and the City shall give written notice to the WWTP Owner of any matters hereunder which may give rise to a claim for indemnification promptly upon receiving actual knowledge of facts which may give rise to such claim, and EFC and the City shall specify in such notice the material facts known to it relating to such potential indemnification right together with the amount or an estimate of the amount of the potential liability arising therefrom, but failure to give such notice shall not release the WWTP Owner from liability with respect to such claims, except to the extent such lack of notice has prejudiced the defense of such claim. In addition, EFC and the City shall give written notice to the WWTP Owner of any court proceeding or litigation within ten (10) business days of receipt of service of such court proceeding or litigation.

ARTICLE 14 MISCELLANEOUS PROVISIONS

Section 14.01 Severability

If any term or provision of this Agreement or the applications thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then such term or provision shall be ignored, and to the maximum extent possible, this Agreement shall continue in full force and effect, but without giving effect to such term or provision.

Section 14.02 Assignment or other Disposition of the Agreement

The WWTP Owner agrees to notify EFC and NYCDEP at least thirty (30) calendar days prior to an assignment, transfer, conveyance, sublet or otherwise disposition of this Agreement or any part thereof, or of its right, title, or interest therein, or its power to execute such Agreement to any person, company or corporation. Notwithstanding this Section 14.02, the WWTP Owner may retain and employ contractors to assist in performing services hereunder subject to the limitations and restriction on contractors set forth in Article 4 of this Agreement.

Section 14.03 Modification

No amendment to this Agreement shall be binding on any of the Parties hereto unless such amendment is in writing and is executed by the Party against whom enforcement of such amendment is

sought subject to New York State Attorney General and Office of New York State Comptroller approval.

Section 14.04 Notifications

A. Unless otherwise expressly provided in this Agreement, any notice from one Party to the other Parties required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or by certified mail, return receipt, requested or by overnight mail to the following addresses:

If to EFC:


New York State Environmental Facilities Corporation
50 Wolf Road, Room 508
Albany, New York 12205
Attention: Director of Technical Advisory Services

with a copy to:

New York State Environmental Facilities Corporation
50 Wolf Road, Room 508
Albany, New York 12205
Attention: General Counsel

If to the WWTP Owner:

New York State Department of Transportation
Building 5, State Office Campus
1220 Washington Avenue
Albany, New York 12232
Attention: Director of Contracts

 Management AND
Richard D. McKee
TRANSPORTATION MAINTENANCE
with a copy to: DIVISION

New York State Office of General Services
Corning Tower, 35th Floor
Empire State Plaza
Albany, New York 12242
Attention: Director of Contract Administration

If to the City or NYCDEP:

New York City Department of Environmental Protection
465 Columbus Avenue, Suite 350
Valhalla, New York 10595
Attention: Deputy Commissioner Bureau of Water Supply Quality and Protection

with a copy to:

New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Corona, New York 11368
Attention: General Counsel

B. Either Party or the City/NYCDEP, at any time, may designate a new address for the receipt of notices by providing written notice of such new address to the other Party, in the manner specified in this Section.

C. Notices sent to either Party or the City/NYCDEP in accordance with this Section 14.04 shall be deemed to be delivered when sent.

Section 14.05 No Third Party Beneficiary

This Agreement between EFC and the WWTP Owner is not intended to create any benefit or interest in any third party except for the City.

Section 14.06 Cooperation

The Parties and the City acknowledge and agree, that during the term of this Agreement they will mutually cooperate with each other and provide each other promptly with all documentation, reports, and information which may be necessary to carry out their respective obligations under this Agreement. Nothing in this Agreement shall be deemed as consent by, or an obligation of, either Party or the City to provide documents or information protected by, or to waive, the attorney-client privilege or the attorney-work product privilege.

Section 14.07 Claims or Actions Related to this Agreement

A. The WWTP Owner shall report to NYCDEP and EFC in writing within ten (10) business days of the initiation by or receipt of service

against the WWTP Owner of any legal action or proceeding in connection with or relating to this Agreement. Additionally, as soon as is practicable, the WWTP Owner shall also report to the City, NYCDEP and EFC all potential claims related to the Upgrade Project, of which the WWTP Owner or the Engineer is aware or should be aware.

B. The WWTP Owner shall also submit with the Close-Out Package a final verified statement of any and all known potential claims against the City, NYCDEP or EFC in any way connected with or arising out of this Upgrade Contract setting forth with respect to each such claim the total amount thereof and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates claimed for performance of the work, or a particular part thereof, was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. The WWTP Owner is warned that unless such claims are completely set forth as herein required, the WWTP Owner upon acceptance of the final payment, pursuant to this Agreement, will have waived any such claims under this Agreement.

C. The WWTP Owner agrees that any contract between the WWTP Owner and a Contractor to perform any work to be paid with Program Funds hereunder shall include, without limitation (i) a provision advising the Contractor of the provisions of Section 14.07B, (ii) a provision requiring that the Contractor provide to the City, NYCDEP and EFC, as well as to the WWTP Owner, written notification of any claim or potential claim arising under such Contract, and (iii) advising the Contractor that failure to provide such written notification prior to or upon acceptance of the final payment under such contract, the Contractor will have waived any and all such claims as against the City, NYCDEP, EFC and the WWTP Owner.

Section 14.08 Miscellaneous

A. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. To the extent permitted by law, the Parties consent to the jurisdiction of the court of competent jurisdiction for disputes arising from this Agreement.

B. With the exception of the Watershed MOA, this Agreement constitutes the

entire understanding between the Parties with respect to the subject matter hereof. In the event of any conflict between the terms of this Agreement and the terms of the Watershed MOA, the Watershed MOA shall govern. Other than the Watershed MOA, this Agreement supersedes all inconsistent prior agreements with respect to the subject matter hereof, whether written or oral. Except for the foregoing, by entering into this Agreement, the WWTP Owner accepts all of the terms and conditions of this Agreement as governing its rights and obligations.

C. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

D. The titles of sections and subsections of this Agreement have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein. All references herein to the singular shall include the plural, and vice versa.

E. Neither the failure of either Party to exercise any power given such Party hereunder, or to insist upon strict compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

F. The Standard Clauses for All New York State Contracts, as set forth in Appendix E annexed hereto, are hereby incorporated herein and made a part hereof.

G. All representations, indemnifications, warranties and guarantees made in, required by or given by the WWTP Owner in accordance with Articles 3, 10, and 12 of this Agreement, as well as all continuing obligations of the WWTP Owner indicated in Articles 3, 10 and 12 of the Agreement, will survive final payment to the WWTP Owner, completion of the work and termination or completion of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed by their duly authorized representatives as of the date herein above first written, in triplicate, one part to be filed with the Commissioner of the Department of Environmental Protection, one part to be retained by EFC and one part to be delivered to the WWTP Owner.

WWTP Owner

BY: 

Rex K. Grathwol, Director of
Contracts Management
New York State Department of
Transportation

Owner' Representative

BY: 

William O'Connor, Deputy Commissioner
New York State Office of General Services

New York State Environmental Facilities
Corporation ("EFC")

BY: 

APPROVED AS TO FORM:

OFFICE OF THE STATE ATTORNEY
GENERAL
APPROVED AS TO FORM
NY'S ATTORNEY GENERAL

BY:

Title:

Date:

DEC 17 1998


PETER FAVRETTO
ASSOCIATE ATTORNEY

APPROVED:

OFFICE OF THE STATE COMPTROLLER

BY: 

Title:

Date:

DEC 28 1998

ACKNOWLEDGMENT

STATE OF NEW YORK :

COUNTY OF _____ : ss.

On this _____ day of _____,
199_, before me personally came Rex K. Grathwol,
to me known, who, being by me duly sworn, did
depote and say that he is the Director of Contract
Management of the New York State Department of
Transportation, the individual described in and who
executed the foregoing instrument, and that he
signed his name thereto as authorized by said State
Agency.

Notary Public

STATE OF NEW YORK :

COUNTY OF _____ : ss.

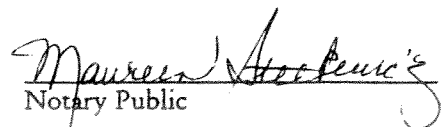
On this _____ day of _____,
199_, before me personally came William
O'Connor, to me known, who, being by me duly
sworn, did depote and say that he is the Deputy
Commissioner of the New York State Office of
General Services, the individual described in and
who executed the foregoing instrument, and that he
signed his name thereto as authorized by said State
Agency.

Notary Public

STATE OF NEW YORK:

COUNTY OF ALBANY: ss.

On this 14th day of December,
1998 before me personally came J. Andrea Estus, to
me known, who being by me duly sworn did depote
and say that ~~he~~/she is the ^{Director of} ~~operations~~ E. ADAM, the
individual described herein and who executed the
foregoing instrument, and that ~~he~~/she signed
his/her name thereto as authorized by the said
public benefit corporation.


Notary Public

MAUREEN STETKEWICZ
Notary Public in the State of New York
Residing in Greene County
My Commission Expires 10-6-06

STATE OF NEW YORK }

:SS.:

COUNTY OF ALBANY}

On the 17 day of October, 1998 before me appeared William F. Edwards to me known and known to me to be the DEPUTY COMMISSIONER of the Office of General Services of the State of New York and the same person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as such DEPUTY COMMISSIONER for and on behalf of and in the name of the People of the State of New York.

JOHN D. LEWYCKYJ
Notary Public, State of New York
No. 4853288
Qualified in Saratoga County
Commission Expires February 17, 2000


Notary Public

STATE OF NEW YORK }

:SS.:

COUNTY OF ALBANY}


On the _____ day of _____, 1998 before me appeared _____ to me known and known to me to be the _____ of the Department of Transportation of the State of New York and the same person described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same as such _____ for and on behalf of and in the name of the People of the State of New York.

Notary Public

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed by their duly authorized representatives as of the date herein above first written, in triplicate, one part to be filed with the Commissioner of the Department of Environmental Protection, one part to be retained by EFC and one part to be delivered to the WWTP Owner.

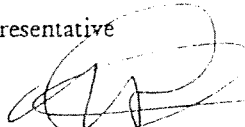
WWTP Owner

BY:


Rex K. Grathwol, Director of
Contracts Management
New York State Department of
Transportation

Owner's Representative

BY:


William O'Connor, Deputy Commissioner
New York State Office of General Services

New York State Environmental Facilities
Corporation ("EFC")

BY:



APPROVED AS TO FORM:


OFFICE OF THE STATE ATTORNEY
GENERAL

BY:

Title:

Date:

DEC 17 1998


PETER FAVRETTO
ASSOCIATE ATTORNEY

APPROVED:

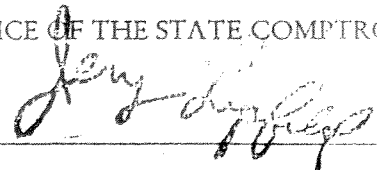
OFFICE OF THE STATE COMPTROLLER

BY:

Title:

Date:

DEC 28 1998



ACKNOWLEDGMENT

STATE OF NEW YORK :

COUNTY OF _____ : ss.

On this _____ day of _____, 199_, before me personally came Rex K. Grathwol, to me known, who, being by me duly sworn, did depose and say that he is the Director of Contract Management of the New York State Department of Transportation, the individual described in and who executed the foregoing instrument, and that he signed his name thereto as authorized by said State Agency.

Notary Public

STATE OF NEW YORK :

COUNTY OF _____ : ss.

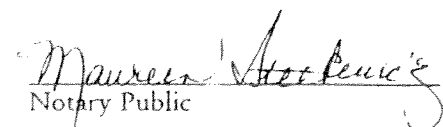
On this _____ day of _____, 199_, before me personally came William O'Connor, to me known, who, being by me duly sworn, did depose and say that he is the Deputy Commissioner of the New York State Office of General Services, the individual described in and who executed the foregoing instrument, and that he signed his name thereto as authorized by said State Agency.

Notary Public

STATE OF NEW YORK:

COUNTY OF ALBANY: ss.

On this 14th day of December, 1998 before me personally came J. Andrea Estus, to me known, who being by me duly sworn did depose and say that he/she is the Director of Operations & Admin. the individual described herein and who executed the foregoing instrument, and that he/she signed his/her name thereto as authorized by the said public benefit corporation.


Notary Public

MAUREEN STETKEWICZ
Notary Public in the State of New York
Residing in Greene County
My Commission Expires 10-6-06

Schedule 1

I-684 Brewster Rest Area (NB) Wastewater Treatment Plant

Incremental Cost

Baseline

Insurance

Itemizable Regulatory Upgrade Cost

Fuel Oil
Chemicals
Legal
Clerical
Engineering
Office Supplies
Spare Parts
Instrumentation Spare Parts
Laboratory Contract
Maintenance Contract(s)
Contingency

Proportional Cost

Electricity
WWTP Operation labor
Generator Contract
Generator Oil
Building Maintenance
Auto
Auto Gas
Tipping Fees
Training

Other O&M Costs

Office Supplies
Telephone
Maintenance Supplies
Lab Supplies

